

SENATE BILL REPORT

SB 5071

As of February 14, 2007

Title: An act relating to visitation rights for grandparents.

Brief Description: Concerning visitation rights for grandparents.

Sponsors: Senators Fairley, Kohl-Welles, Shin and Rasmussen.

Brief History:

Committee Activity: Human Services & Corrections: 2/08/07.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Staff: Indu Thomas (786-7459)

Background: Washington has two statutes allowing a non-parent to petition for court-ordered visitation with a child. The Washington Supreme Court found that one visitation statute unconstitutionally infringed on a fit parent's right to control visitation with his or her child. The Court determined that visitation over the objections of a fit parent was only appropriate if a substantial relationship between the third party and the child exists and denial of visitation would result in actual harm to the child. The other visitation statute allows for any person to petition for visitation at any time if a child is in the custody of a non-parent. The statute permits the Court to grant such a petition if visitation is in the child's best interest. The Washington Supreme Court held that this law is unconstitutional. The court reasoned that the child must suffer harm from being denied visitation before a court can order visitation that is contrary to the desires of a parent or legal guardian.

Recently, the Washington Supreme Court once again reviewed both provisions. In doing so the Court reaffirmed that the visitation provision in the third party custody statute is unconstitutional and therefore inoperative. However, rather than address the visitation rights of non-parents in the dissolutions statutes, the Court recognized the status of de facto parents granting them standing to petition for a determination of the rights and responsibilities that accompany legal parentage in this state. The Court set forth four factors to be considered in granting an individual de facto parent status: (1) the natural or legal parent consented to and fostered the parent-like relationship; (2) the petitioner and the child lived together in the same household; (3) the petitioner assumed obligations of parenthood without expectation of financial compensation; and (4) the petitioner has been in a parental role for a length of time sufficient to have established with the child a bonded, dependent relationship, parental in nature.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Bill: The third party visitation provision in RCW 26.10.160(3) is removed and RCW 26.09.240, the visitation statute in the dissolution chapter, is repealed. New provisions regarding grandparent visitation are established. A grandparent may petition for court ordered visitation with a child once if: (1) the grandparent has a significant relationship with the child; (2) the parent substantially interfered with that relationship; and (3) the grandparent tried to resolve any disagreement with the parent before going to the court. The court is required to order contact with the child if the grandparent shows by clear and convincing evidence that the child would likely suffer harm if contact is not awarded, and the parent's denial of contact was unreasonable and not in the child's best interest.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Currently there are no viable statutory provisions available for grandparents to seek visitation. Washington is the only state that does not have a grandparent visitation statute. Grandparents who are actively involved in the lives of their grandchildren should not be prevented from seeing them when their children are struggling with drug addiction or acrimonious divorces. Neither should a grandparent be denied the ability to have a relationship with a grandchild because of the death of their child. It is in the best interests of children to have the stability and guidance that grandparents offer. This bill is specifically and extremely restrictive. The parent child relationship and the parent's decisions about visitation are honored. This is a reasonable step.

CON: The bill is too restrictive. It focuses on the status of the applicant for visitation and not the status of the child. This legislation creates additional and unnecessary conflict in families. When parents are unfit, there are other provisions of the statutes which apply. Those protections are sufficient. A parent is and should be responsible for a child's development in every area. This structure is critical to the healthy development of children. Grandparents should not be able to disrupt nuclear families with protracted litigation. Families should work through their problems with love and patience and understanding. This bill fails to recognize that the vast majority of parents are fit and reasonable parents with healthy family relationships.

OTHER: The status in the bill is too narrow. Grandparents are important in the lives of children. There are other family members who have significant and beneficial relationships with children whose interests are being cut out. The focus on the bill should be on the relationship rather than on the status of the petitioner.

Persons Testifying: PRO: Geraldine Laemmle, Roger Aitchison, Barb Holbrook, Grandparent's Rights Organization of Washington; Lauren Moughon, American Association of Retired Persons, Washington.

CON: Steve Walsh, grandparent; Lonnie Johns-Brown, National Organization for Women, DiAnna Brannan, Susan Bradick, citizens; Max Bruk, parent.

OTHER: Edith Owen, Pierce County Relatives Raising Children; Molly Lawrence, Northwest Women's Law Center; Rick Bartholmew, Washington State Bar Association Family Law Section.